Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 9 of the Communications Act	)	MD Docket 94-19
Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year	)	

REPLY COMMENTS OF SPRINT CORPORATION

Respectfully submitted,

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SUMMARY

In its reply comments, as in its initial comments, Sprint generally endorses the Commission's proposals to implement the regulatory fees enacted as part of the 1993 Budget Act, as sound and equitable. Sprint urges the Commission to reject AT&T's proposal for calculating IXC fees on the basis of gross renenues, rather than access lines, because it believes AT&T's arguments are without merit.

On the other hand, Sprint endorses several commenters' proposals which it believes will promote efficiency and even-handed treatment in implementation of the fees. These include exogenous treatment of regulatory fees for interstate common carriers under price caps; the assessment of LEC fees by holding company rather than by operating company for determining "large" classification; the option of lump sum payment on the last day of the fiscal year for payors of large and standard fees; designation of December 31 of the calendar year preceding the fiscal year for measurement of data on which fees are based; and confidential treatment of fee information.

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Sprint Corporation ("Sprint"), on behalf of Sprint Cellular Company, Sprint Communications Company L.P., and the United and Central Telephone companies, respectfully submits its reply comments on the above-referenced Notice of Proposed Rulemaking. Sprint agrees with many of the commenters' positions with respect to the application of fees to common carrier payors, and elaborates on these positions below. Sprint strongly disagrees, however, with AT&T's proposal to substitute a different multiplier for the calculation of IXCs' regulatory fees, and urges the Commission to reject it.

I. AT&T'S PROPOSAL TO REPLACE THE PROPOSED FEE MULTIPLIER FOR IXCS SHOULD BE SUMMARILY REJECTED

In its comments, AT&T proposes (p. 3) that the Commission replace the proposed fee multiplier for IXCs ($60 per 1000 presubscribed lines) with a multiplier "based on each carrier's relative share of total IXC gross revenues for the preceding calendar year." AT&T states that its proposal would "result in a

more equitable distribution of the fees..., would be consistent with Commission policy as well as actions in analogous proceedings, and can be administered without imposing additional administrative burdens on the Commission or carriers" (id.).

AT&T's proposal should be rejected. Contrary to its assertions, there is nothing inequitable or discriminatory about using presubscribed lines as the allocation basis. As explained further below, the use of a per-presubscribed line multiplier is far easier to implement than is a revenue-based multiplier, and this ease of implementation is certain to result in more accurate measurements, which are less subject to manipulation, than would be the case for a revenue-based allocation. The use of presubscribed lines as a basis for fee allocation is also fully consistent with other charges assessed on IXCs.

AT&T complains (p. 5) that fee allocation based on presubscribed lines does not "accurately reflect the various IXCs' share of switched services...." This is simply not true. These fees (which are intended to recover some of the Commission's costs related to its enforcement, policy and rulemaking, user information and international activities) cannot be allocated on a cost-causative basis and the allocation basis is necessarily arbitrary. These fees are no more closely related to IXC revenues than they are to IXC presubscribed lines. Both are equally "valid" or "invalid" as a means of allocation. The

fact that different measures generate different market share estimates does not render either estimate discriminatory, anti-competitive or even more accurate than the other.

Under these circumstances, the Commission should adopt the allocation methodology which is simplest to implement. Presubscribed lines constitute such an allocation basis. The number of lines presubscribed to each IXC is a readily available, measurable, and auditable figure which is already provided to the Commission.[1]

In contrast, "gross revenues" are subject to considerable dispute. Different companies define "gross revenues" in different ways; for example, they may or may not include international settlements payment; uncollectibles; or intrastate, non-operating or unregulated service revenues. Revenue figures are also more subject to revision than are presubscribed line counts, which could necessitate some sort of true-up, further complicating the fee allocation process.[2] It is not even clear

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1. As MCI states (p. 4), "it is important that the 'multiplier' i as concrete and specifically defined as possible. This ensures that the regulated firm, as well as the regulator, can have confidence that the fee paid is the correct one." Specifically defined multipliers also "will avoid questions of interpretation" (id.).

2. The Commission has noted that contribution calculations based on revenues "is necessarily inexact" because of "the uncertainties in estimating both costs and reportable revenues" (Telecommunications Relay Services and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Third Report and Order released July 20, 1993 (FCC 93-357), paragraphs 21-22). Thus, rates for TRS funding may involve a true-up calculation in subsequent rate periods.

which entities (resellers, CAPs, OSPs, ESPs, 900 service providers, etc.) would be required to report their revenues for purposes of determining fee allocations. And, even if the Commission did precisely define "revenues" and specify which parties are required to provide such information, it simply does not have the resources to audit the figures supplied.

Second, AT&T complains that line-based charges "artificially discourage IXCs from seeking out and serving low volume users" (p. 6). This claim is also without merit. Much of Sprint's marketing effort (e.g., its television advertising) is national in scope and does not discriminate between low and high volume residential customers. Sprint, and presumably other of AT&T's competitors, do not (indeed cannot) refuse to serve low-volume residential customers. For example, Sprint has participated actively in every equal access balloting and allocation opportunity of which it was aware.

The fact that AT&T may have more low volume customers than do its competitors is irrelevant. AT&T's success among these customers is directly related to its former monopoly position; AT&T has never claimed that low volume customers are unprofitable and has never offered to relinquish this "burden" to another IXC. In any event, since most of the country has now been converted to equal access, it is simply incorrect for AT&T to claim (p.5) that it is "the carrier of last resort" for low

volume users; besides Sprint and MCI, many customers have the option of choosing from among dozens of other interexchange carriers. Certainly, the Commission does not require AT&T to serve as the "carrier of last resort."

Third, AT&T complains (p. 3) that using presubscribed lines as an allocator does not account for providers of services that use dedicated facilities. While it may be true that presubscribed lines do not reflect private line usage, AT&T does not even attempt to demonstrate that inclusion of some private line allocator will result in any material shift in the fee burden among IXCs. Complexity should be avoided if it does not result in proportionately greater benefits in terms of accuracy.

Finally, allocating fees on the basis of presubscribed lines is entirely consistent with other Commission rulings. For example, both USF and lifeline assistance costs are assessed on IXCs on a presubscribed line basis. The fact that TRS contributions are based on revenues does not mean that revenues are always the better allocation basis; it just means that for this particular subsidy element, the Commission decided to use an allocation methodology which differed from that which it mandated for other rate elements.[3]

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3. Furthermore, TRS costs were allocated among all contributors o the basis of revenues. This is not the case in the instant proceeding.

II. REGULATORY FEES SHOULD RECEIVE EXOGENOUS TREATMENT UNDER PRICE CAP RULES

A number of commenters agree that it is entirely appropriate for the regulatory fees to be treated as exogenous for interstate common carriers under price cap regulation (Ameritech at 3, BellSouth at 2, GTE at 14, NYNEX at 4). As BellSouth states (p. 6), "[e]xogenous treatment is consistent with the Commission's price cap policies as well as the Commission's past determinations affording exogenous treatment for other governmentally-imposed fees such as TRS Fund contributions and utility taxes." Several commenters point out that the regulatory fees precisely fit the Commission's definition of exogenous costs as those costs that are "triggered by administrative, legislative or judicial action beyond the control of the carriers"[4] and are not so universal as to "be reflected in the inflation variable of the PCI."[5]

The comments of Allnet, however, urge the Commission not to accord exogenous treatment to the regulatory fees, because they allege the fees are essentially a tax, inasmuch as they offset some of the general taxes that were previously used for funding Commission operations.

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4. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, adopted September 19, 1990, paragraph 166.

5. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, Order on Reconsideration, adopted April 9, 1991, paragraph 63.

This argument is seriously flawed on two counts. The purpose of the regulatory fees is to recover a portion of the Commission's operational costs. The fact that this portion was previously funded by federal appropriations does not convey a definition of "general taxes" to regulatory fees. Nevertheless, even if the Commission were to agree with Allnet's assertion that the fees are equivalent to taxes, there is more than ample precedent to accord the fees exogenous treatment. As BellSouth states in its comments, the Commission has previously ruled that utility taxes imposed on common carriers are exogenous because such taxes "uniquely and disproportionately affect common carriers."[6] Thus, irrespective of the classification of regulatory fees with respect to taxes, Allnet's claim is totally without merit.

The regulatory fees squarely fit the Commission's two-pronged test for exogenous treatment. The Commission should reject Allnet's argument and accord regulatory fees exogenous treatment under price cap rules, as proposed by the other commenters.

III. LARGE FEE DETERMINATION SHOULD BE BASED ON THE FEES OWED ON A LEC HOLDING COMPANY, RATHER THAN AN OPERATING COMPANY BASIS

Sprint's initial comments support the Commission's proposal to create three fee classifications -- large, standard and small -- to accommodate requirements in the Budget Act ("the

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6. Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal 473, 7 FCC Rcd 1486, 1487 (1992).

Act") for the timing of regulatory fee payments. Under the Act, annual fees classified as "large" may be paid in installments. Sprint's comments recommend that to be equitable the Commission should establish a consistent definition of large customer-based fees paid by common carriers, regardless of service category. Sprint further recommends that the benchmark defining large fees be $250,000.

In their comments, Ameritech and NYNEX both advocate the assessment of LECs' access line-based fees on a holding company, rather than on an operating company basis (Ameritech at 2, NYNEX at 5). Consistent with its comments, Sprint strongly agrees. This is both administratively efficient and equitable, as it accords LECs comparable treatment with common carriers of other service categories, e.g., IXCs.

Thus, if the Commission adopts Sprint's proposal, a common carrier whose customer-based fee obligation is at least $250,000 would be considered a large payor, whether the fee is based on an IXC's presubscribed access lines, a LEC holding company's access lines, or a wireless common carrier's subscribers.

IV. LARGE AND STANDARD FEE PAYORS SHOULD BE PERMITTED TO MAKE AN ANNUAL PAYMENT ON SEPTEMBER 30

Southwestern Bell's comments (p. 2) propose that, in lieu of installment payments, payors of large fees should be allowed to make a lump sum payment on September 30, the final day of the fiscal year. Southwestern further states that payors of standard

fees, due annually in a lump sum payment, should be allowed to make their payment on the same date. Southwestern argues (p. 3) that the fees are "a form of reimbursement, not a return to a revenue producing entity. Thus, the benefit of the time value of money should be retained by the payors. [In addition,] the sooner a company incurs a debt, the more interest costs (expense/debt) it incurs." Sprint agrees with Southwestern's assessment and fully supports its proposal. The overall annual financial burden of the regulatory fees on Sprint, as stated in its initial comments, is a substantial $1 million. Early payment of those fees will impose even greater burdens on Sprint and other large payors. Sprint urges the Commission to minimize the burden on payors to the extent possible, by allowing them to retain the time value of the money which will ultimately be remitted in the form of regulatory fees. As Southwestern states, "[s]uch additional costs are unnecessary to, and in fact beyond, a mere collection of originally appropriated funds that have been expended." (id.)

V. A DATE CERTAIN SHOULD BE ESTABLISHED FOR MEASUREMENT OF APPLICABLE DATA; DECEMBER 31 OF THE CALENDAR YEAR PRECEDING THE FISCAL YEAR WOULD BE AN APPROPRIATE DATE

Sprint and several other commenters recommend that the Commission establish a date certain for measurement of data on which regulatory fees are calculated. Sprint and PCIA both recommended designation of October 1 (the first day of the applicable fiscal year) for this purpose. Several other commenters (CTIA at 3, GTE at 4, NYNEX at 5) recommend December

31 of the calendar year preceding the applicable fiscal year. As these commenters state, a considerable amount of data is already measured and reported on a calendar-year-end basis. Therefore, designating December 31 as the measurement date for annual regulatory fees would both ensure consistency and minimize measurement burdens on payors. Sprint believes that these are valid arguments and has no objection to the designation of December 31 of the previous calendar year for data measuring purposes.

VI. REGULATORY FEE INFORMATION SHOULD BE TREATED AS CONFIDENTIAL

GTE's and CTIA's comments both argue that regulatory fee amounts and accompanying data submissions are in many cases competitively sensitive (GTE at 5-6; CTIA at 5-6). Both sets of comments urge the Commission to amend Section 0.457(d) of its rules to prevent release to the public of fee amounts and underlying data (GTE at 6; CTIA at 8). Sprint supports this proposal as a means of protecting the confidentiality of competitively sensitive information.

VII. CONCLUSION

Sprint believes that the Commission has proposed rules for the implementation of regulatory fees that are essentially fair and equitable for common carrier payors. The Commission's proposed fee multiplier for IXCs, based on presubscribed access

lines, is sound, and the Commission should reject AT&T's claim that a measurement based on gross revenues would be superior. In addition, Sprint believes that adoption of the proposals and clarifications that Sprint and other commenters have advanced as outlined above, will promote efficiency, fairness and confidentiality in the implementation of the Commission's rules. These proposals include 1) exogenous treatment of regulatory fees for interstate common carriers under price caps; 2) classification of large fees as $250,000 and above for service categories of common carriers, assessed by holding company for LECs; 3) lump sum payment on September 30 for large and standard fee payors; 4) establishment of December 31 of the preceding calendar year for measurement of applicable fiscal year fees; and 5) confidential treatment of fee information.

Respectfully submitted,

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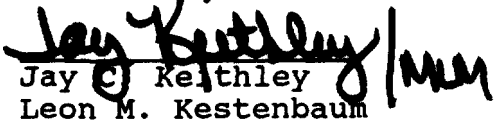
By: 

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April 18, 1994

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 18th day of April, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket 94-19 filed this date with the Acting Secretary, Federal Communications Commission, to the persons listed on the attached service list.

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